

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 21**

PARSEC, INC.

Employer

Case 21-RC- 183412

and

GENERAL TEAMSTERS, AIRLINE
AEROSPACE AND ALLIED EMPLOYEES
WAREHOUSEMEN, DRIVERS
CONSTRUCTION, ROCK AND SAND,
LOCAL 986, INTERNATIONAL BROTHERHOOD
OF TEAMSTERS

Petitioner

and

TRUCK DRIVERS, CHAUFFEURS,
WAREHOUSEMEN & HELPERS UNION
LOCAL 707, NATIONAL PRODUCTION
WORKERS UNION

Intervenor

REQUEST FOR REVIEW

Respectfully submitted on behalf of
the TRUCK DRIVERS, CHAUFFEURS,
WAREHOUSEMEN & HELPERS UNION
LOCAL 707, NATIONAL PRODUCTION
WORKERS UNION

BY:

The Law Offices of Patrick J. Calihan,
53 W. Jackson Blvd. – Suite 1534
Chicago, Illinois 60604
Tel. (312) 922-3113
Fax. (312) 922-7576

DATED: March 28, 2017

REQUEST FOR REVIEW

On March 15, 2017 the Regional Director for the National Labor Relations Board, Region 21, issued a Report on Objections and Certification of Representative without holding a hearing on the merits of Objections filed by the Intervenor to the conduct of an election held between the above parties. Intervenor Local 707 files herein its Request for Review pursuant to Section 102.69(c)(2).

INTRODUCTION

On November 9, 2016 and November 10, 2016, a representation election was held among employees at the above employer's facility located near Los Angeles California. Out of the 777 eligible voters, 455 employees voted for the Petitioner (Local 986) and 193 employees voted for the Intervenor (Local 707). 7 employees cast their vote against representation. Pursuant to Section 102.69(a) of the National Labor Relations Board's Rules and Regulations the Intervenor filed timely amended objections on November 16, 2016 to conduct affecting the results of the election that occurred during a critical period in above matter. Two objections referred to unfair labor practice charges previously filed with Region 21 and for which witnesses had been presented. On November 21, 2016 the Intervenor identified additional witnesses to the previously detailed Objections requesting an extension. The Region waited until March 15, 2017 to overrule Intervenor's objections in their entirety, and its extension of time request, without having held a hearing.

FACTUAL MERITS

This request for review is sought upon the grounds that Region 21's refusal to conduct a hearing raises a substantial policy question as to its departure from and/or absence of Board Precedent, under the circumstances presented herein, pursuant to Section 102.67(e). By refusing to even consider the proofs at a hearing and by misreading the nature of what was presented, the regional director's decision to not even consider the substantial factual issues presented in the Intervenor's objections, was clearly erroneous and has prejudicially affected the rights of the Intervenor.

The Intervenor objected, *with specificity*, to seven areas of employer activity, and inactivity, that assisted the Petitioner and hindered the Intervenor, Local 707 and to four areas of Petitioner's conduct, all of which showed that the election had been tainted:

1. The Employer allowed Teamsters/Teamster supporters to wear Teamster Vests while in close proximity to the polling place/tent where members had to vote.
2. The Employer allowed Teamster/Teamster Supporters to wear Teamster Vests for weeks leading up to the election *after* the company told all employees that they were only allowed to wear company vests.
3. The Employer allowed Teamster Vests and other Teamster Logo Paraphernalia to be kept within Company trucks.

4. The Employer allowed a Teamster Organizer/Employee of the Company to drive at least four employees, while wearing a Teamster Vest, while in a company van, to vote *during* the election.

5. The Employer-provided voting tent had, on both sides of it on the day before the election 'Vote Teamster' stickers.

6. The Employer, since August 2016, allowed the Incumbent/Intervenor Union's agents, stewards and supporters to be threatened with removal of their "e-rail badges", which would result in their inability to remain employed, if they campaigned on company premises. [Also referenced in Charge 21-RC-183817]

7. The Employer, after the petition was filed, unilaterally changed a condition of employment, namely telling employees that they had to stay out an additional 15 minutes before they were allowed to swap out their vehicles for the next shift. [Also referenced in Charge 21-RC-185509]

The above objections to Employer conduct are alleged by the Intervenor to have resulted in both the intimidation of voters and in the encouragement of the impression that the Employer supported and/or acquiesced in the support of the Teamsters. Local 707 also objected to specific Teamster conduct:

8. The wearing of Teamster vests by Teamsters/Teamster Supporters while in close proximity to the polling place/tent where the members had to vote.

9. Teamsters/Teamster Supporters wearing Teamster Vests were overheard telling voters to 'vote Teamster' as they were entering the polling place/tent.

10. & 11. Barring 707 supporters from attending Teamster meetings and calling 707 supporters derogatory names, among other activities in addition to the above.

These activities were alleged by the Intervenor to have constituted acts of illegal electioneering and intimidation of the voters such that many would fear either retaliation for voting freely and or kept many from voting at all.

The Region overruled all of the Objections, with the exception of Objection 6 and Objection 7, on the grounds that the witness identities were disclosed four days late and then overruled the remaining Objections, both on the grounds that they did not reasonably interfere with employee' free and uncoerced choice in the election. Notably, Intervenor's request for an extension of time, filed contemporaneously with its additional witnesses in November, was not ruled upon until the March 15th Report.

Local 707 appeals and request review of the decision(s) of the Region. It also objects to the procedural ruling, made in March, that witnesses tendered in November came forward four days 'too late' to ever require a hearing.

ARGUMENT

The Incumbent should have *at the very least* been allowed to have had a hearing in order demonstrate how the threat of the loss of the e-rail badges (Objection 6) critically hampered their ability to campaign, combined with the one-two punch of the loss of company paid time (Objection 7) on the very cusp of an election. These two activities should have been evaluated and evaluated in tandem, in a full election-conduct hearing, prior to any dismissal. Nine other substantive objections were also unfairly dismissed.

Region 21 cites Board case law on what is supposed to go into a determination of whether to set aside an election. It references that the test is whether the conduct of a party has “the tendency to interfere with employees’ freedom of choice”. *Cambridge Tool & Mfg. Co., Inc.*, 316 NLRB 716, 716 (1995). The Region went on to clarify that the issue is not whether a party’s conduct *in fact* coerced employees, but whether or not the party’s (or in this case, parties) misconduct reasonably tended to interfere with the employees’ free and uncoerced choice in the election. *Baja’s Place*, 268 NLRB 868, 868 (1984) and *Pearson Education, Inc.*, 336 NLRB 979, 983 (2001), citing *Amalgamated Clothing Workers v. NLRB*, 441 F.2d 1027, 1031 (D.C. Cir.1070).

Having correctly set forth the test, Region 21 set about to ignore it.

Addressing the gravamen of the disputed conduct of the Employer raised in **Objection 6**, Local 707 submits that it was given ‘short shrift’ by the Region when it investigated its claim. The very heart of the charge that Local 707 made was that while 707 agents, steward and supporters were threatened with losing their livelihoods if they ‘campaigned’ on company property, when Teamster agents and supporters blatantly did the same (parking on the company premises, distributing literature, and even disrupting work) no such threat was presented. By threatening one’s e-rail badge, whether it was an employee driver’s badge, a union steward’s badge or even a visiting business agent’s, all who wished to campaign for 707 (and obviously were employed therein) would be unable to lawfully remain on the premises and therefore effectively be fired if they did.

One was clearly better off to be on the premises unlawfully in the first place! At the very worse, a Teamster agent might face the threat of being escorted off the premises. He or she could come back the next day or the next hour. The hapless 707 person faced job loss. Region 21 says that they investigated this claim and then posits that 707 didn’t show ‘that the alleged unlawful statements was disseminated to any employees in the bargaining unit’. Did the Region do anything more than request a copy of the collective bargaining agreement from the employer? The Intervenor, when assembling its witnesses, was instructed by the investigating region not to bring ‘duplicative testimony’ – only to find out that it now rules that despite the testimony of those who *they* did take testimony from, it wasn’t enough. A post-election hearing on a ULP charge is a good idea.

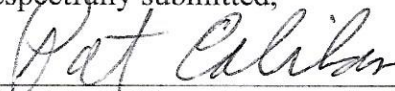
So what did they think 707 was complaining about? How doesn't the above threat, which only applies to those working with badges, 'reasonably tend to interfere' with a free and uncoerced choice in the election? It did interfere - and a full and fair determination should have gone to hearing. *Cambridge Tool & Mfg. Co., Inc.*, supra.

Now let us address the effects of the charge contained in **Objection 7**, given the above and in an election context. One again, Region 21 greeted this serious, inexplicable employer conduct, committed just weeks after the Petitioner filed a petition for election but *before* an election was scheduled, with 'short shrift'. When the employer, after nearly two decades of allowing employees an extra 15 minutes, on company time, within which to transfer the vehicles that they were operating to employees about to start the next shift – when employer Parsec unilaterally eliminated that working condition, the Incumbent Union did everything it could to stop this change from taking effect before the election. It failed and filed ULP charges. Once again, the investigating Region couldn't see the harmful conduct as anything of moment and regarding Objection 7 on March 15th ruled predictably that "there was no evidence presented from any employee affected by the alleged change" or that it was "material, substantial, or significant". Did Region 21 ever require the employer to articulate how or why this happened without bargaining?

Local 707 submits that the *fact* of the stealing of a quarter of an hour of paid time from the Parsec employees just before the election, which resulted in said ULP charges, combined with the restrictions placed only upon e-rail badge holders, not to campaign under penalty of employment suicide - this *fact* required Region 21, faced with all of 707's objections regarding the election, to conduct a hearing into just how the two objection(s) reasonable tended to interfere with employees 'freedom of choice' under *Cambridge Tool & Mfg. Co., Inc.*, supra, et seq. The one-two punch was considerable.

Finally, on **Objections 1,2,3,4,5,8,9,10, and 11** ruled out of hand by Region 21, the Intervenor submits that given the pandemonium outlined by the charges themselves, especially combined with Objection 6 & 7, the Region just might have allowed for the fact that many employees may have been and were reluctant to come forward under the circumstances. Also, given the fact that at least one of the Objections (7) was still on appeal and neither Objection 6 or 7 were analyzed as to their potential cumulative effect on each other, the Region should have scheduled a hearing shortly after its November 21st receipt of the witnesses to the above. Procedural error was committed in not ruling on the extension request. As it stands now, all that exists is a record that shows that Region 21 did a good job in making sure that no one will ever know just how far afield from a fair election those Parsec employees received under *Cambridge Tool & Mfg. Co., Inc.*, supra.

Respectfully submitted,



Patrick J. Calihan, Attorney for Local 707

CERTIFICATE OF SERVICE

One copy of the foregoing REQUEST FOR REVIEW has been served upon the following on March 28, 2017 *via email*.

Regional Director - Region 21
National Labor Relations Board
888 S. Figueroa St Floor 9
Via: Thomas.Rimbach@nrlrb.gov

Jonathan Siegel, Attorney for Parsec, Inc.
Jackson Lewis, P.C.
5000 Birch Street, Suite 5000
Newport Beach, CA 92660-2148
Via: SiegelJ@jacksonlewis.com

Debra S. Goldberg, General Counsel
Teamsters Local 986
1198 Durfee Avenue
South El Monte, CA 91733
Via: DGoldberg@Teamsters986.org



Truck Drivers Union Local 707, NPWU

Patrick J. Calihan, 707 Atty.
53 W. Jackson Blvd. – Suite 1534
Chicago, Illinois 60604
(312) 922-3113; fax (312) 922-7576
pcalihan@sbcglobal.net